DOI 10.24147/2542-1514.2020.4(2).28-40

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INCREASED TAX RATES IN THE TAXATION SYSTEM OF THE REPUBLIC OF LITHUANIA

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Article info
Received –
2019 August 16
Accepted –
2020 April 15
Available online –
2020 July 03

Keywords
Environmental taxes, land tax, real estate tax, tax, taxation, tax law, tax rates, Lithuania

The subject. The research covers analysis of legal regulation that sets the increased tax rate instrument and the comparison of this instrument with other similar legal instruments.
The purpose of the article is to clarify the content of the increased tax rate as legal instrument of taxation, its place in the general tax system, as well as the assumptions and objectives of the application thereof. The authors dare to confirm or disprove hypothesis that increased tax rates can be considered as specific punitive measure applied to taxpayers.
The methodology of the research includes the analysis of Constitution and legislation of Republic of Lithuania, system analysis, logical-analytical method, formal-legal interpretation of Lithuanian laws.
The main results, scope of application. An increase in the tax rate means exceptional taxation conditions opposite to the application of tax reliefs. It should be noted that if the application of the tax reliefs is foreseen in practically all taxes applied in Lithuania, the increase of the tax rate is intended only in a few cases. Taxation system of Lithuania sets the possibility to apply increased tax rates for real estate, land, natural resources and environmental protection taxes if the respective conditions foreseen in legislation are met. This legal regulation forms the distinct legal instrument – the increased tax rate. The increased tax rates is the economic sanction that comes to effect for harmful or illegal behaviour. The consequences of these economic sanctions are very severe what makes this instrument being equal to legal responsibility. Furthermore, this research examines if the higher tax rate might be applied along with other forms of legal responsibilities, for example, fine under the tax law. When trying to answer the question whether it is correct to recognize the application of a higher tax rate as a legal liability measure, it is necessary to clarify the purposes of its application, the bases (assumptions) that differ in individual taxes.

The legal presumption of the application of the calculation of real estate and land taxes at the increased rate is the compliance of the object of taxation with certain objective properties established by the legal acts, i.e. abandonment, non-use of the property or the use not for the intended purpose, which results in the inclusion of such property in special lists of objects subject to levy of increased tax rate. The increased tax rate on state-owned natural resources is applied when the extracted resources are undeclared, the declared quantity of extracted resources is lower than the quantity actually extracted or extraction of natural resources is performed without the permit. Therefore, the application of a higher tax rate on state natural resources or environmental pollution tax is a consequence of the improper performance of their obligations under the relevant tax laws, for the purpose of punishing for the breaches of tax laws. Meanwhile, none of the laws enshrining the imposition of an increased tax rate provides for any grounds for exempting the taxpayer from paying the increased tax rate.
Conclusions. The higher tax rate is, in essence, is to be considered a specific punitive measure applied to taxpayers. This is confirmed by the logical analysis of the texts of tax laws. The application of the higher tax rate in all cases is determined by violations of legal acts (taxes or other) which allow this phenomenon to be seen as a specific form (instrument) of legal coercion (liability).

ISSN 2542-1514 (Online)

1. Introduction

Article 7 of the Law on Tax Administration[1] (hereinafter - LTA) declares: "Where tax laws are applied, all taxpayers shall enjoy the equality of treatment stemming from the conditions established by these laws." Therefore, the statutory taxes must be paid by all persons recognized by the laws as taxpayers by following the terms and conditions provided for in tax laws [1, p. 26; 2, p. 171]. At the same time, tax laws also provide for exceptions to this general principle of taxation, in particular by establishing the right of taxpayers to benefit from tax reliefs. Tax relief means a special taxation conditions established in respect of the taxpayer or a group of taxpayers that are more favourable than the usual conditions of taxation [3, p. 168]. In this way, the LTA associates tax reliefs with exceptional taxing conditions that are more favourable compared to usual [4, p. 50]. It is obvious that the determination and the application of tax reliefs are intended to facilitate the tax burden for individual taxpayers or the groups thereof. However, a wider analysis of the tax laws allows for a distinction to be made between other exceptional tax conditions which, contrary to tax reliefs, are less favourable to the taxpayer than usual ones. This is the application of a higher (increased) tax rate [5, p. 11]. The application of a higher rate, although not a common phenomenon in the Lithuanian taxation system, is important in some taxes, where it is applied either as a necessary tax instrument (real estate, land tax) or as an additional taxation instrument used as a direct consequence of the activities of taxpayers (environmental taxes). Since the application of a higher tax rate is related (directly or indirectly) to the taxpayer's activity, such a taxation element is to be regarded as an appropriate instrument of legal effect, although it is not mentioned in the tax legislation itself.

Despite the fact that the application of a higher tax rate is of great importance in some taxes and that the nature of this phenomenon is not clear so far, the issue of a higher tax rate in Lithuanian law science has been examined a little: here it is either limited to the statement of the presence of such phenomenon and short description of it [6, p.178-182; 7, p. 415-436; 8, p. 105-111] or it is examined only in the context of environmental (ecological) taxes [9, p. 144-163]. That is why the article, using systematic, analytical exploratory and other research methods, examines the increased tax rate in both property and environmental taxes in order to clarify the content of this legal instrument of taxation, its place in the general taxing structure, as well as the assumptions and objectives of the application thereof.

2. Increased rate as an element of the tax structure

2.1. General provisions

Every tax apart from general features is also characterized by variable attributes, the whole of which is called tax structure, legal composition, etc., in tax law [10, p. 10; 11, p. 51-57]. It is generally accepted that the internal structure of each tax consists of the following variable attributes of tax: taxpayer, an object of taxation and tax base, tax rate (tariff), essential tax payment rules (mandatory attributes), as well as tax relief (additional attribute) [7, p. 78].

The tax rate (tariff) is one of the mandatory attributes of the tax variables, which must necessarily be consolidated in the tax law that establishes an appropriate fee. The tax rate is the rate from the tax base (in terms of size) established by the tax law to be paid by the taxpayer to the budget [7, p. 85]. Hence, the amount of the tax to be paid is calculated by applying the tax rate established by the law to the tax base. A tax rate is an effective tool for the implementation of fiscal policy in the state because by adjusting tax rates only the state can influence the collection of taxes without changing the overall tax system. As stated by the Constitutional Court in the ruling of 9 October 1998, "On the compliance of clause 2 of paragraph 1 of Article 13 of the Law on Excise

[1] Mokesčių administravimo įstatymas 2004 m. balandžio 13 d. Nr. IX-2112 // *Teisės aktų registras.* I. k. 1041010ISTA0IX-2112.

ISSN 2542-1514 (Print)

Duties of the Republic of Lithuania with the Constitution of the Republic of Lithuania", the tax rate compared to the object of the tax is a more variable tax element. By changing the tariff by the legal acts, the legal conditions to respond more quickly to market changes and conjuncture, and to identify economic priorities for the state. Thus, the tax rate is a "flexible lever for the regulation of the economy". Usually, each tax is calculated and paid by applying the tax rate set by the tax law to the relevant tax base. However, in individual cases, the payer falls into an exceptional taxation situation and is subject to the taxation under higher than normal tax rates. In this case, a phenomenon of tax increase (aggravation of the tax burden) is faced, the essence of which is that under the conditions set by the tax law the taxpayer is taxed according to the increased tax rates. For example, an increased tax rate for environmental pollution is levied on taxpayers who emit more polluting substances than allowed by the normative standards, etc. Thus, a higher tax rate is a tax rate that is higher than usual and only applies in the event of taxation circumstances forms as per tax laws. It is obvious that the application of a higher tax rate should be associated with exceptional taxing conditions and the implementation of the principle of equality of taxpayers. In its ruling of 24 January 1996 "On the compliance of the provisions of the first paragraph of Article 10 and the norms of the first paragraph of Article 50 of the Law on Companies of the Republic of Lithuania and the provisions of the second paragraph of Article 2 and the sixths paragraph of Article 16 of the Law on the Privatization of State Property of the Republic of Lithuania with the Constitution of the Republic of Lithuania" the Constitutional Court stated that "it is permissible to establish" unequal legal regulation with respect to certain categories of persons who are in different situations". Thus, according to the doctrine of the Constitutional Court, it can be stated that the application of a higher tax rate to individual taxpayers does not contradict the principle of equality of taxpayers. A prerequisite is that the application of such a rate must be substantiated by the law.

2.2. Increased rate in property taxes

As already mentioned, an increase in the tax rate means exceptional taxation conditions opposite to the application of tax reliefs. It should be noted that if the application of the tax reliefs is foreseen in practically all taxes applied in Lithuania, the increase of the tax rate is intended only in a few cases: in some property and environmental taxes.

In Lithuania, as in other countries, property taxes belong to local taxes, i.e. the revenue from such taxes is mainly credited to local (municipal) budgets [12,p.23; 13, p.165-166]. These are 1) real estate (except land) tax; 2) inheritance tax and 3) land tax. Paragraph 1 of Article 6 of the Law on Real Estate Tax[2] states that the tax rate shall range from 0.3 per cent up to 3 per cent of the taxable value of real estate. A municipal council shall, by 1 June of the current tax period, establish a specific tax rate which shall be valid in the territory of a relevant municipality from the beginning of the next tax period (Paragraph 2 of Article 6)[3]. Similarly, the issue related to the establishment of a greater tax rate is also addressed in the land tax. Paragraph 1 of Article 6 of the Law on Land Tax[4] defines that the tax rate shall be from 0.01 per cent to 4 per cent of the taxable value of land. The municipal council shall set the particular tax rate which shall be valid in the territory of the respective municipality. (Paragraph 2 of Article 6). Paragraph 2 of Article 6 of the Law on real estate tax enables the municipal council also to establish several specific tax rates which shall be differentiated only on the basis one or several of the following criteria: purpose of immovable property, use, legal status, technical features, maintenance condition thereof, categories of taxpayers (size or legal form or social situation) or the location of immovable

[2] Nekilnojamojo turto mokesčio įstatymas 2005 m. birželio 7 d. Nr. X-233. //*Teisės aktų registras.* I.k. 1051010ISTA000X-233.

[3] Municipal councils do not have the right to set the rate of immovable property tax for residential, garden, garage, property, greenhouse, farm, auxiliary farm, scientific, religious, recreational buildings (premises), fishery structures and engineering structures owned or acquired by natural persons, with a total value of over EUR 220,000.

[4] Žemės mokesčio įstatymas 1992 m. birželio 25 d. Nr. I-2675 // *Teisės aktų registras.* I.k. 0921010ISTA00I-2675.

ISSN 2542-1514 (Online)

property in the territory of the municipality (according to the priorities set forth in strategic planning and territorial planning documents). The land tax rates shall be differentiated according to principal purpose of land use, method of the use of a land parcel, use or non-use of a land parcel, size of a land parcel, categories of taxpayers (size or legal form or social status), location of a land parcel in the territory of the municipality (clauses 1 to 6 of paragraph 3 of Article 6 of the Law on Land Tax). It is obvious that neither the Law on Real Estate Tax nor Law on Land Tax directly consolidates an increased rate for immovable property tax or land tax, but delegates to the municipal councils (if appropriate) to implements this by identifying potential criteria for differentiating these taxes. For that purpose, each municipal council makes decisions on the establishment of real estate and land tax rate in its territory. For example, the Council of Vilnius City Municipality approved a 1 percent real estate tax rate by Decision No 1-971 "On Establishing Real estate Tax Rates for 2018"[5]. Hotels, recreation, catering, culture, sports, scientific buildings (premises) and buildings (premises) used for satisfying the public needs in the field of culture and education (bookshops, art galleries, creative workshops) are subject to a 0.7 percent tax rate. Whereas, actually used buildings the completeness of which is less than 100 percent and immovable property that is abandoned and/or unattended is subject to a statutory maximum tax rate of 3 percent. Similarly, the question of the real estate tax rate is also addressed in other municipalities. Thus, the municipalities, using the powers provided by the laws, establish a higher (maximally permitted) immovable property tax rate for unattended, abandoned, unused buildings or not used for its intended purpose.

Similarly, the question of the land tax rate is solved. By Decision No. 1-1238 "On Establishing the land tax rate for 2018"[6] of 22 November 2017, the Council of Vilnius City Municipality approved a total land tax rate of 0.08 percent for all land owned by natural persons and a 0.12 percent land tax rate for all land owned by legal persons, except for unused land parcels and land parcels that have structures recognized as arbitrary construction in the manner prescribed by legal acts, they are subject to a 4 percent tax rate. Similar practice in setting land tax rates is followed by the overwhelming majority of other municipalities; the maximum allowable maximum land tax rate applies to abandoned or unused land.

It is to be noted that increased real estate and land tax rates are set for objects that are not used, are used not for their intended purpose, are not maintained, etc., i.e. do not comply with the legal requirements established for their use and handling. It should be noted that the Law on Real Estate Tax does not stipulate what real estate is to be considered as unused, not used for its intended purpose, unmanaged or abandoned in terms of taxation, and Law on Land Tax - what land is considered unused. These questions are addressed independently by the municipalities. The Supreme Administrative Court of Lithuania (hereinafter - the SACL) has held in its practice that the essential criterion for inclusion of an object (buildings, land parcel) in the list of unmanaged, abandoned real estate (land parcels) or those used not for the intended purpose (unused) is the following: there, first of all, should be a certain condition of the object, which is determined by objective features, taking into account the requirements of the legislation in force[7]. In each municipality, lists of unused real estate or not used for its intended purpose or abandoned and unattended real estate are created for taxation purposes. For example, the Council of Vilnius City Municipality approved the Description of the Procedure for Drawing and Changing the List of Real Estate Objects, which is

[5] Vilniaus miesto savivaldybės tarybos 2017 m. gegužės 31 d. sprendimas Nr. 1-971 "Dėl nekilnojamojo turto mokesčio tarifų 2018 metams nustatymo". URL: http://vilnius.lt/lt/savivaldybe/teises-aktai (Viewed on 10.08.2018).

[6] Vilniaus miesto savivaldybės tarybos 2017 m. lapkričio 22 d. sprendimas Nr. 1-1238 "Dėl žemės mokesčio tarifų 2018 metams nustatymo". URL: http://vilnius.lt/lt/savivaldybe/teises-aktai/ (Viewed on 11.08.2018).

[7] SACL ruling of 17 October 2013 in the administrative case No A-492-1833-13.

ISSN 2542-1514 (Print)

abandoned and/or unattended or the construction of which is unfinished but is being used, with a maximum 3 percent of real estate tax rate (hereinafter - the List) by already mentioned Decision No. 1-971 of 31 May 2017 "On Establishing Real Estate Tax Rates for 2018". The purpose of the Description of Procedure is to determine the property that is abandoned and/or unattended, to evaluate the actions of the owners regarding the use, maintenance, improvement of the condition of these objects or the management of the territory they occupy and to tax the objects included in the List with the maximum real estate tax rate in accordance with the procedure. The List includes the real estate of natural and legal persons, which, according to Article 4 of the Law on Real Estate Tax, is recognized as a subject of tax and does not fall into the list of objects exempt from the real estate tax, and meets one or several of the following criteria: 1) the owners or users of premises and structures do not perform the duties of the users of buildings under the supervision of the building as provided for in Article 47 of the Law on Construction[8] (use of the structure (its premises) not for the intended purpose), except in cases and procedure established by the Government; do not comply with the requirements for the use and maintenance of the structure laid down in the normative technical documents of construction or in the normative documents for the safety and purpose of construction, in order to preserve the characteristics of the building (its parts, engineering systems) in accordance with Regulation (EU) No. 305/2011; do not organize and/or do not perform the technical maintenance of the building in accordance with the procedure established by the Law on Construction and other laws; do not repair, rebuild or demolish structures if their continued use endangers human life, health or the environment); 2) actually uses real estate, the construction of which is not completed in accordance with the procedure established by the Law on Construction.

A similar procedure is also observed when establishing land tax rates. Since the Law on Land Tax does not specify what land is to be considered abandoned or unused, the municipalities, which determine the criteria on the basis of which unused land parcels are determined, are entrusted to do this. For example, the Council of Vilnius City Municipality approved the Description of the Procedure for Identification of Unused Land Parcels[9] by Decision No 1-1527 of 9 May 2018, which regulates the procedure and conditions for drawing and amending the list of unused land parcels. The list includes land parcels that meet at least one of the following criteria: 1) a building permit for demolition issued to the user of the land parcel or a part thereof, and in one year the real estate is not deregistered from the State Enterprise Centre of Registers in accordance with the procedure established (in individual cases, the Council of Vilnius City may set a longer term for demolition sites in the case of larger demolition works); 2) a detailed land-use planning document has been prepared and approved for the land parcel, however, within one year the changes of the data of this land parcel (changes of cadastral data) are not recorded in the State Enterprise Centre of Registers or the registered cadastral data do not comply with the solutions of detailed territorial planning document; 3) a construction permit for a new construction issued to a user of the land parcel or the part thereof and: a) within four years from the date of issuance of a document authorizing the use of residential areas in the land parcel in accordance with the established procedure, the 100% completeness of the building is not registered in the State Enterprise Centre of Registers, or b) within three years from the date of issuance of a construction document authorizing the use the commercial areas on the land parcel in accordance with the established procedure, the 100 percent completeness of the building is not registered in the State Enterprise Centre of Registers; 4) the building on the land parcel is included in the list of real

[8] Statybos įstatymas 1996 m. kovo 19 d. Nr. I-1240 // Teisės aktų registras. I. k. 0961010ISTA00I-1240.

[9] Vilniaus miesto savivaldybės tarybos 2018 m. gegužės 9 d. sprendimas Nr. 1-1527 "Dėl Nenaudojamų žemės sklypų nustatymo tvarkos aprašo patvirtinimo". URL: http: //vilnius.lt/lt/savivaldybe/teises-aktai/ (Viewed on 11.08.2018).

ISSN 2542-1514 (Online)

estate subject to the increased real estate tax rate approved by the order of the Director of the Administration (the list includes the part of the parcel that is proportional to the building); 5) the land parcel is abandoned; i.e. no activities according to the established main purpose and method of the land are carried out; the implementation of solutions (purpose, way, nature) of the detailed territory planning document for determining the parcel has not been commenced; the land parcel is unattended, unarranged, with abandoned (unmanaged) buildings; the land parcel is not arranged so that it is suitable for the main intended land use purpose or is not maintained at all (e.g. the land for other purposes is overgrown with bushes, trees, etc.); 6) the target purpose of the land use of the agricultural parcel has been changed to another purpose of land use in accordance with the procedure established by legal acts, however, within one year of the approval of such territorial planning document, the changed purpose of the parcel has not been registered in the State Enterprise Centre of Registers; 7) there are structures on the land parcel recognized as arbitrary construction in the manner prescribed by legal acts.

It can be observed that municipalities establish unequal characteristics of real estate property that is abandoned, unused or not used for its intended purpose. Consequently, the real estate that would be considered as abandoned (unused) in one municipality would not necessarily be considered as abandoned (unused) in another municipality, etc. In all cases, however, real estate that meets the criteria set by the municipalities is included in the list of unused, not used for their intended purpose or abandoned real estate objects and is taxed at a higher real estate (land) tax rate[10]. Therefore, a person who disagrees with his obligation to pay a tax calculated on the basis of a higher tax rate must contest the decision of the municipal council on the relevant property tax rate or the decision of the tax administrator regarding the amount of the calculated property tax, but to demand the removal of his owned (used) property from the relevant property the list[11].

2.2 The increased tax rate in environmental taxes

Environmental taxes are, the aim of which is not only to supplement the state treasury but also to rationalize the use of natural resources and ensure environmental protection [7, p. 416; 14, p.15; 15, p. 39; 16,p.39], are part of the state tax system of the Republic of Lithuania, too[12]. Persons who extract taxable state natural resources in the territory of the Republic of Lithuania pay a tax on state natural resources according to the tax rates set out in Annexes 1, 2 and 3 of the Law on Tax on State Natural Resources[13]. However, the application of an increased tax rate is foreseen for undeclared or declared a lower amount of natural resources than extracted and/or natural resources extracted without the permit. Unlike in the case of the land or real estate tax, it is not predetermined in the relevant legislation (municipal council decision) but is calculated by multiplying the rates set out in Annexes 1, 2 and 3 of the Law by a factor 10 (paragraph 2 of Article 6). Thus, the application of an increased tax rate on state natural resources is a direct consequence of the taxpayer's act and is applicable in the following cases: 1) when the state natural resources extracted are not declared; 2)

[10] This is also confirmed by the practice of the SACL according to which the inclusion of immovable property (land) in such list causes legal consequences for the owner of the real estate as he is obliged to pay a certain amount of property (land) taxes, the tariffs of which are determined in the decisions of the municipal council (SACL ruling of 15 October 2005 in administrative case No A-492-1572-14).

[11] This is also confirmed by the practice of the SACL, which, when examining the merits of inclusion of immovable property in the list, dismissed the case because the applicant in the case did not require the deletion of the buildings managed by the applicant from the list. (SACL ruling of 23 February 2016 in administrative case No A-457-143/2016).

[12] Some authors state that all energy / ecological / green taxes have more fiscal than regulatory effects [17, p. 73].

[13] Mokesčio už valstybinius gamtos išteklius įstatymas 1991m. kovo 21 d. Nr. I-1163 // *Teisės aktų registras*. I.k. 0911010ISTA00I-1163.

ISSN 2542-1514 (Print)

when the declared amount of state natural resources is lower than that actually extracted; 3) when natural state resources are obtained without a permit.

Another environmental tax with an increased tax rate is the environmental pollution tax. Paragraph 3 of Article 9 of the Law on Environmental Pollution Tax[14] stipulates that the increased rate is applied in case of 1) exceeding the set amount of emission of pollutants from stationary sources; 2) for concealing the amount of pollutants; 3) for concealing taxable goods or taxable packaging; 4) for concealing the amount of waste disposed of in the dumping ground. It is obvious that the obligation to pay an increased environmental tax on environmental pollution is related to the excess of permissible pollution or concealment thereof. The legal meaning of *concealment* is disclosed in the case-law. For example, in one of the cases examined by the SACL, it has clarified that the declaration in accordance with the established procedure and terms under the Law on Environmental Pollution Tax is a sufficient legal basis for the application of the normal tax calculation procedure. Whereas, non-declaration of the tax means the concealment and non-disclosure of the harmful activity extent and related obligations to the state, which poses a greater risk to the interests protected by laws and leads to the emergence of higher monetary obligations to the state[15]. In the other cases examined, the SACL stated that timely declaration of the number of taxable goods and, consequently, non-payment of tax could be regarded as concealment of taxable goods[16]. Similarly, the concept of concealment is interpreted by law: the obtained resources are considered concealed if they are not shown by the taxpayer in the annual tax payment report or obtained without a permit for the use of natural resources (when mandatory) [6, p. 181]. On the other hand, the non-declaration of environmental pollution cannot itself be considered as a sufficient basis for the application of a higher tax rate. According to SACL, for the application of Paragraph 3 of Article 9 of the Law on Environmental Pollution Tax (to the statement of the fact of the concealment of the number of taxable goods) also requires the determination of the fact that the taxpayer deliberately pursued a specific unlawful result, i.e. the concealment of taxable goods. Such circumstances, in addition to the timely declaration of quantities of taxable goods, are also fraudulent handling of accounting, forgery of accounting documents, hindering the tax authority from performing statutory duties, etc.[17] Thus, in order to apply a higher tax rate, it is necessary to state the fact of a deliberate desire of a taxpayer to avoid tax.

3. Increased tax rates as a means of punishment

Although it is not directly established in tax laws, the increased tax rate is, in essence, is to be considered a specific punitive measure applied to taxpayers [18, p. 133]. This is confirmed by the logical analysis of the texts of tax laws. Thus, the increased rate for environmental pollution is provided for in Article 9 of the Law on Environmental Pollution Tax, which deals with the payment control of the tax for environmental

[14] Mokesčio užaplinkos teršimą įstatymas 1999 m. gegužės 13 d. Nr. VIII-1183 // *Teisės aktų registras.* I.k. 0991010ISTAIII-1183.

[15] SACL ruling of 16 December 2013 in administrative case No A-520-2042-13; SACL ruling of 14 September 2005 in administrative case No A7-928/2005.

[16] SACL ruling of 29 October 2015 in the administrative case No A-768-438/2015.

[17] For example, the material examined by SACL shows that the applicant handled the accounting of rethreaded tires, submitted available accounting data in collaboration with the defendant based on which the payable tax has been calculated. Having assessed the above circumstances, the panel of judges found that in the present case, the fact that the applicant deliberately sought to conceal the quantities of taxable goods, thus avoiding the obligation to pay environmental pollution tax on the waste of taxable products have not been proved in the case. Based on these arguments, the SACL stated that sanction provided for in Paragraph 3 of Article 9 of the Law on Environmental Pollution Tax was applied in an unjustified manner and the applicant should not have been subject to an increased rate of tax. Thus, in order to apply a higher tax rate, it is necessary to state the fact of a deliberate desire of a taxpayer to avoid tax. SACL ruling of 29 October 2015 in the administrative case No A-768-438/2015.

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pollution. It is obvious that the aim of the overall control of taxpayers is to find out whether taxpayers perform their taxing obligations correctly and accurately and to bring them to justice when violations are found. The nature of the increased tax rate as a sanction is recognized by both the science of tax law[18] and case-law[19]. Applying an increased tax rate in all cases is determined by violations of legal acts (taxes or other) and allows this phenomenon to be seen as a specific instrument of legal coercion (liability).

When trying to answer the question whether it is correct to recognize the application of a higher tax rate as a legal liability (punishment) measure (form), it is first necessary to clarify the purposes of its application, the bases (assumptions) that differ in individual taxes. Taxes generally perform two main functions: fiscal and regulatory [19, p. 69; 20, p. 222]. These functions are also performed in the case of applying an increased tax rate. In addition, they perform another punishment function that is not a characteristic of other taxes. It has been mentioned that the increased property tax levied on real estate and/or land tax is included in special lists. Hence, the unfavourable legal consequences for the taxpayer (the application of an increased rate) arise, when he abandons his property, does not maintain it, does not use it or uses it for purposes other than its intended purpose, i.e. does not fulfil the obligations of proper property maintenance. Therefore, in order to consolidate the taxation of such property with an increased tax rate, the aim is not only to collect more income into the municipal budget, but also to punish the owners who do not care about their property. This is confirmed by the criteria formed by the municipal councils for identifying abandoned or unused real estate property (for example, objects that do not meet the requirements of the Law on Construction). The objectives of a higher environmental tax rate as a punishment measure are even more evident: higher rates of tax on state natural resources and environmental pollution apply when taxpayers do not fulfil (improperly fulfil) their duties as taxpayers. It is therefore clear that the purpose of calculating their taxes at the increased rate is primarily to penalize them for inappropriate conduct contrary to law, as confirmed by the practice of the SAC: the SACL has stated that the calculation of the environmental pollution tax at a higher rate is an economic sanction for the taxpayer[20], and the main purpose of a penalty cannot, in principle, be different from the punishment, but also to deter both an offenders and other persons from doing so in the future[21].

The legal presumption of the application of the calculation of real estate and land taxes at the increased rate is the compliance of the object of taxation with certain objective properties established by the legal acts, i.e. abandonment, non-use of the property or the use not for the intended purpose, which results in the inclusion of such property in special lists of objects subject to levy of increased tax rate. That is, the owner (user) of such property does not violate the requirements of the tax laws by his actions (inaction) not taking any actions for proper maintenance of the property, using it not for its intended purpose. By his actions (inactions), he does not fulfil the requirements of other legal acts (Law on Construction, Law on Land, etc.), as a result of which his property managed (used) is included in the relevant lists and is subject to an increased tax rate. The application of an increased tax rate, in

[18] For example, the law-science states that, in individual cases, environmental pollution charges may be calculated on the basis of increased rates, which is, in fact, should be considered an application of a penalty [6, p. 184].

[19] Thus, the SACL extended panel of judges examined the normative administrative case regarding the compliance of clause 6 of the Description of the Procedure for Calculation and Payment of Environmental Pollution Tax from Mobile Pollution Sources approved by a joint order of the Minister of Environment and the Minister of Finance with Paragraph 3 of Article 9 and Paragraph 2 of Article 4 of the Law on Environmental and with the Constitution and, in this context, clarified that the calculation of environmental pollution tax at a higher rate under the content, basis of application and purpose is an economic sanction for the taxpayer (SACL ruling of 17 September 2015 in administrative case No. I-12-143/2015).

[20] SACL ruling of 17 September 2015 in the administrative case No I-12-143/2015.

[21] SACL ruling of 18 November 2011 in the administrative case No A143-2619/2011.

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this case, is an indirect (in the sense of taxation) consequence of the taxpayer's act and should not be directly related to a breach of tax law. Therefore, it can be said that in such a case the taxpayer in the form of an increased tax rate *is punished* for non-fulfilment (improper fulfilment) of the provisions of other legal acts. After the taxable object has been arranged in accordance with the requirements of the relevant legislation, such an object will be removed from the list of objects subject to the increased tax rate and the person will no longer be liable to pay the tax at the increased rate. Therefore, the application of the increased tax rate provided for in property taxes is not a means of punishment for violation of tax laws, but the persons who do not fulfil (improperly fulfil) the tax liability applicable to them in accordance with the Law on Real Estate Tax and Law on Land, are subject to the liability provided for in LTA: according to Paragraph 1 of Art. 139 of the LTA, If the tax administrator determines that the taxpayer has failed to calculate taxes not subject to declaration (including the tax to be calculated in the customs declaration) or has failed to declare taxes subject to declaration or has illegally applied a lower tax rate, which has resulted in an illegal reduction of payable tax, the amount of tax underpayment shall be calculated in respect of the taxpayer and a penalty equal to 10-50% of the said amount shall be imposed, unless the relevant tax law provides otherwise.

The increased tax rate on state-owned natural resources is applied when the extracted resources are undeclared, the declared quantity of extracted resources is lower than the quantity actually extracted or extraction of natural resources is performed without the permit. As it can be seen, the first two assumptions concerning the application of the increased tax rate are directly related to the failure to fulfil (improperly fulfil) the obligation of the tax declaration obligation laid down in the tax legislation and therefore should be regarded as a breach of tax laws. Whereas, the third assumption for applying an increased rate is that the extraction of natural resources without the permit is of a different nature. By extracting the resources without the permit, the taxpayer violates not only the requirement for tax but also environmental legislation to have a permit issued in accordance with the established procedure for the extraction of natural resources. Therefore, the application of a higher tax rate, in this case, may also be related to a breach of environmental law. A higher tax rate on environmental pollution is applied when pollution is exceeded and/or concealed (not declared (declared incorrectly). Thus, it can be stated that the legal basis for the application of the higher rate in this tax is both violation of environmental laws prohibiting the excess of permissible environmental pollution and violation of tax laws requiring a proper declaration of pollution. However, since pollution for taxing purposes is always related to its declaration, it can be argued that non-declaration of pollution (non-declaration) should be regarded as a breach of tax law. As regards these taxes, it is also necessary to take into account the entities subject to the application of the increased tax rate: they are the relevant taxpayers who do not properly fulfil their tax obligations. Therefore, the application of a higher tax rate on state natural resources or environmental pollution tax to them is a consequence of the improper performance of their obligations under the relevant tax laws, for the purpose of punishing for the breaches of tax laws. It should be noted, that neither the Law on State Natural Resources Tax nor the Law on Pollution Tax contains specific articles on liability. It is, therefore, safe to say that the application of a higher rate is the only means of liability (punishment) to be applied to these taxpayers. Comparing with LTA Article 139, it has certain particularity.

In accordance with LTA Article 139, the amount of the imposed fine depends on the nature of the breach, on whether the taxpayer has cooperated with the tax administrator, on the recognition of the breach of tax laws and on other circumstances that the tax authority recognizes as important when imposing a higher or lower fine. In this way, LTA Article 139 allows the tax administrator to personalize the tax fine imposed. In the case of application of an increased tax rate, such a possibility is not foreseen. It is true that in exceptional cases the SACL has deviated from the higher tax rates enshrined in law in absolute sizes.

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For example, in one case the SACL stated that the applicant duly declared and paid the relevant taxes before the fact of erroneous declaration, and therefore it was to be considered that there was no purpose to conceal the part of the hunting areas used and to have taxing benefits. Failure to fulfil the imperative requirements in the field of the environment, in this case, should not be regarded as deliberate[22]. On the basis of these arguments, the SACL in the examined case deviated from the increased tax rate established in the law and applied only a 100 percent higher tax rate instead of 1000 percent.

In addition, Paragraph 1 of Article 141 of LTA states that the taxpayer may be exempted from the payment of the penalties imposed: 1) if the taxpayer proves the absence of his fault with regard to the violation; 2) if the tax law was violated due to circumstances beyond the taxpayer's control and which he could not and did not foresee; 3) where a separate act of the taxpayer, though in violation of the provisions of a tax law, causes no damage to the budget; 4) where the taxpayer violated the law due to the faulty summarised explanation of the said tax law is given or a faulty tax consultation is provided by the tax administrator in writing or by telephone. Meanwhile, none of the laws enshrining the imposition of an increased tax rate provides for any grounds for exempting the taxpayer from paying the increased tax rate.

4. Conclusions

LTA Article 7 declares: "Where tax laws are applied, all taxpayers shall enjoy the equality of treatment stemming from the conditions established by these laws." Therefore, the statutory taxes must be paid by all persons recognized by the laws as taxpayers of that tax. At the same time, tax laws provide for exceptions to this general principle of taxation, in particular by establishing the right of taxpayers to benefit from tax relief. However, a wider analysis of the tax laws allows for a distinction to be made between such exceptional tax conditions which, contrary to tax relief, are less favourable to the taxpayer than usual ones. This is the application of a higher (increased) tax rate. The application of a higher rate is not a common phenomenon in the Lithuanian taxation system, however, it is important in individual taxes, where it is applied either as a necessary tax instrument (real estate, land tax) or as an additional taxation instrument used as a direct consequence of the activities of taxpayers (environmental taxes).

Law on Real Estate Tax and Law on Land Tax enables the municipal council to set a number of specific rates for the taxes, which are differentiated according to one or more of the following criteria: purpose, use, legal status of the real estate, its technical characteristics, maintenance status, categories of taxpayers. The analysis of the decisions of the municipal councils enables to note that higher real estate and land tax rates are set for objects that are not used, are used not for their intended purpose, are not maintained, etc., i.e. do not comply with the legal requirements established for their use and handling.

An important part in the tax system of the Republic of Lithuania is an environmental taxes. Persons who extract taxable state natural resources in the territory of the Republic of Lithuania pay a tax on state natural resources according to the tax rates set out in the Law on State Natural Resources. However, the application of a higher tax rate is foreseen for undeclared or declared a lower amount of natural resources than extracted and/or natural resources extracted without the permit. Article 9 of the Law on Environmental Pollution Tax provides that the pollution tax with an increased tax rate shall be applied in case of exceeding the set amount of emission of pollutants from stationary sources or for concealing the amount of pollutants and/or taxable goods or taxable packaging. It is obvious that the obligation to pay a higher environmental tax on environmental pollution is related to the excess of permissible pollution or concealment thereof.

The higher tax rate is, in essence, is to be considered a specific punitive measure applied to taxpayers. This is confirmed by the logical analysis of the texts of tax laws. Thus, the higher rate for

[22] SACL ruling of 26 January 2012 in the administrative case No A-502-114-12.

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environmental pollution is provided for in Article 9 of the Law on Environmental Pollution Tax, which deals with the payment control of the tax for environmental pollution. The aim of the overall control of taxpayers is to find out whether taxpayers perform their taxing obligations correctly and accurately and to bring them to justice when violations are found. The nature of the higher tax rate as a sanction is recognized by both the science of tax law and case-law. It is obvious that the application of the higher tax rate in all cases is determined by violations of legal acts (taxes or other) which allow this phenomenon to be seen as a specific form (instrument) of legal coercion (liability).

Taxes generally perform two main functions: fiscal and regulatory. These functions are also performed in the case of applying the higher tax rate. In addition, they perform another punishment function that is not characteristic of other taxes. The higher property tax levied on real estate and/or land tax is included in special lists. Hence, the unfavourable legal consequences for the taxpayer (the application of an increased rate) arise, when he abandons his property, does not maintain it, does not use it or uses it for purposes other than its intended purpose, i.e. does not fulfil the obligations of proper property maintenance. Therefore, in order to consolidate the taxation of such property with a higher tax rate, the aim is not only to collect more income into the municipal budget, but also to punish the owners who do not care about their property. Thus, the application of the higher tax rate provided for in property taxes is not a means of punishment for violation of tax laws, but the persons who do not fulfil (improperly fulfil) the tax liability applicable to them in accordance with the Law on Real Estate Tax and Law on Land, are subject to the liability provided for in LTA,

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ISSN 2542-1514 (Online)

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ISSN 2542-1514 (Print)

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BIBLIOGRAPHIC DESCRIPTION

Sudavicius B., Endrijaitis M. Increased tax rates in the taxation system of the Republic of Lithuania. *Pravoprimenenie = Law Enforcement Review*, 2020, vol. 4, no. 2, pp. 28–40. DOI: 10.24147/2542-1514.2020.4(2).28-40. (In Russ.).